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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Steven M. Utter
SERIAL NO.: 09/358,280
FILING DATE: 07/21/99
TITLE: PORTABLE MIST COOLING DEVICE
EXAMINER: C. Kim
A.U.: 3752

DECLARATION OF STEVE UTTER UNDER 37 CFR §1.131

I, Steve Utter, do hereby declare and state as follows:

1. I am a resident of the State of Arizona at the address 25611 S. Val Vista Dr. Chandler, Arizona 85249.
2. I am the inventor of the subject matter described and claimed in the above-identified patent application. I am aware of and understand the above-identified patent application related to a portable evaporative misting apparatus for cooling an individual. I am also aware that all pending claims have been rejected for either a lack of novelty or for obviousness based on either US Patent Number 4,911,339 (Cushing) or Cushing in view of another reference.
3. I conceived of and diligently reduced to practice my invention as claimed in the above-captioned patent application prior to the July 13, 1988 filing date of Cushing.
4. Subsequent to conceiving the invention, I regularly worked toward producing working models of the invention and engaged in regular testing of the working models.
5. In February, 1987, I first conceived of a portable evaporative cooling system which would create a zone of cooler air in the region around a user by emitting a fine spray of an evaporative mist towards and around the user. At the time of my conception, I was working as a landscaper in the Phoenix, Arizona metropolitan area. I

recognized that a need existed for providing a means to cool a person while engaged in outdoors activities in high temperatures.

6. Between February, 1987 and approximately July, 1987, I engaged in developing and testing of different models of my invention and first produced a successful working model in approximately July, 1987.

7. From the time of my conception, February 1987, I diligently worked on producing a working prototype, which I eventually produced on July 1987. This first prototype used pressurized cans, but I found the first prototype to be cost prohibitive. I continued to work towards a more commercially viable embodiment. I finally developed a more cost-effective prototype on February 16, 1989 that incorporated a pressurizable tank equipped with an internal pressurizable bladder.

8. In support of my date of invention prior to July 13, 1988, attached as Exhibit A is a copy of a letter signed and dated by me on June 27, 1989 that provides a then present recollection record of my activities for the previous two years and four months. On June 27, 1989, I mailed this letter to myself by the U.S. Postal Service, certified mail, postage-prepaid. This letter was opened in 1999 before my attorney.

9. Also, provided as Exhibit B are copies of sales receipts dated June 16, 1987, July 14, 1987 and July 22, 1988, reflecting purchases of component parts for my invention, namely a variety of sprayers, that reflect my ongoing efforts to diligently reduce my invention to practice.

10. On July 6, 1989, I filed my initial patent application related to my invention. The application was accorded Serial Number 07/376,380; and it represents the ultimate parent application for the above-captioned present patent application, which is a continuation of US Serial No. 09/042,827, filed March 17, 1998, which is a continuation of US Serial No. 08/802,072, filed February 19, 1997 and issued as US Pat. No. 5,775,590, which is a continuation of US Serial No. 08/664,302, filed June 10, 1996 and issued as US Pat. No. 5,620,140, which is a continuation of 08/324,872, filed October 18, 1994, now abandoned, which is a continuation-in-part of US Serial No. 07/927,231, filed August 7, 1992 and issued as US Pat. No. 5,535,951, which is a continuation of US Serial No. 07/698,356, filed May 7, 1991 and now abandoned, which is a continuation of US Serial No. 07/376,380, filed July 6, 1989 and now abandoned.

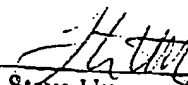
TOTAL P. 04

11. My invention, the personal portable evaporative cooling system, conceived in February 1987, is an embodiment that is within the scope of the currently pending claims of the above-identified application. My original conception consisted of a pressurizable container for storing and delivering water, which could be pressurized by a variety of means, including a manual piston-type pump. The pressurized container was connected to a spray nozzle via a tube. The spray nozzle had an aperture small enough to emit water droplets in small enough particles to form an evaporative mist. An on-off valve was incorporated into the water conduit to control flow of water through the conduit and out the spray nozzle.

12. My original conception covered an evaporative misting device which constitutes an embodiment of the invention within the scope of claims 5 and 18, as all elements are present in the conceived device.

13. My statements detailing my earlier invention and the supporting letter and receipts, in combination, prove my earlier conception of the presently claimed invention and my diligent activity throughout until producing a working prototype. My earlier conception of my invention predates the earliest date of Cushing, July 13, 1988 and, therefore, Cushing should not be considered prior art.

14. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the above-identified application or any patent issuing thereon.

Dated: 12-17-03
Steve Utter